

Cabinet Decision Document

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MINISTER:

Geoff Plant, Attorney General and Minister Responsible for Treaty Negotiations.

TITLE:

BC Rail First Nations Benefits Trust: Proposed structure and process to establish the Trust.

ISSUE: FOR DECISION

The Province has announced its intention to establish a \$15 Million BC Rail First Nations Benefits Trust following completion of the BC Rail Investment Partnership with CN Rail.

The Trust will support economic development, educational advancement and cultural renewal for the 25 First Nations along the BC Rail corridor. This funding may be used to build capacity and provide seed-capital for aboriginal enterprises and joint partnerships, to protect and promote languages, and to support aboriginal youth apprenticeship training.

The Trust will be established by legislation and funded from the \$1 billion in proceeds that the Province expects to receive from CN in fiscal 2003/04. This initiative is linked to the Heartlands Economic Strategy and takes into consideration the unique needs of First Nations.

Principles in the legislation will ensure Generally Accepted Accounting Principles (GAAP) are followed, and will outline provincial interests of accountability and reporting/auditing provisions. The Treaty Negotiation Office, working with the Ministry of Attorney General and the Office of the Comptroller General will lead this inter-ministry team. Other Ministries may need to participate in the future and will be brought into the process as required.

This submission seeks approval to draft legislation aimed at establishing and funding the Trust, pursuant to consultation with the affected First Nations, as outlined below. The legislation will be introduced for debate in the Legislature upon finalization of the BC Rail Investment Partnership, anticipated this fiscal year.

BACKGROUND:

On November 25, 2003, Premier Campbell announced the BC Rail Investment Partnership agreement with CN Rail. Under the agreement, the BC Rail tracks, rail bed and rights-of-way will continue to be held in public ownership by the BC Rail Company, a provincial Crown corporation. The Province will receive \$1 billion from CN in return for the outstanding shares of BC Rail Ltd. and the right to operate over BC Rail's rail bed under a 60-year lease, which is renewable for another 30 years.

BC Rail has a long history of working with the First Nations along its corridor and has developed programs accessed by and partnerships with many of these First Nations. In keeping with this tradition, the Government wants to ensure that these First Nations particularly benefit from the BC Rail Investment Partnership.

Most of the 25 First Nations affected will economically benefit from the \$135 million Northern Development Initiative (NDI), which will stimulate economic growth and job creation in the Peace, Prince George, the Northwest, and the Cariboo-Chilcotin-Lillooet.

The \$15 million BC Rail First Nations Benefits Trust will complement the NDI with an additional source of funding that is specifically intended to benefit the 25 First Nations living along the BC Rail corridor. It will be controlled and managed by representatives from those First Nations, in the interests of their communities, to advance their priorities and support economic development, educational advancement and cultural renewal.

As the BC Rail rights-of-way, rail bed and track will continue to be owned by the British Columbia Railway Company, a provincial Crown corporation, issues of rights and title will not need to be addressed as part of this Investment Partnership. The essential operating business will continue under CN, subject to an exclusive 60-year operating lease of the tracks, which is renewable for another 30 years.

PURPOSE

The BC Rail First Nations Benefits Trust will be established with a one-time transfer of \$15 million to support economic development, educational advancement and cultural renewal for the 25 First Nations along the BC Rail corridor. For example, the funding might be used to build capacity and provide seed-capital for aboriginal enterprises and joint partnerships, to protect and promote languages, and to support aboriginal youth apprenticeship training.

For greater certainty, it is intended that the Trust's governing Board will have complete discretion in deciding how and when the Trust should be used for the maximum benefit of the participating First Nations. It is not the Government's intention to specifically prescribe or in any way control how the funding will ultimately be used to advance the purposes intended.

PARTICIPATING FIRST NATIONS

The First Nations eligible to participate in this Trust are the 25 First Nations along the BC Rail Corridor. See Appendix A for a list of the 25 First Nations.

BOARD POWERS AND MEMBERSHIP

Powers:

The Trust will be managed independent of government and the governing structures will have complete discretion, beyond very basic criteria provided by the Province, over expenditures of the funds, administration and priorities. The governing Board will have complete discretion over its own affairs and the authority to determine what compensation, if any, might be paid to its members or employees. It will not be indemnified by the Province.

It is anticipated that the Board may want to leverage its investments by working in concert with private and public entities, for example, through matching funds initiatives, investing in commercial corporations or for-profit endeavours. The Board will have the legal powers of a natural person, including the right to authorize expenditures, incur debt as appropriate, generate and reinvest income, and enter into contractual relationships and partnerships.

Membership:

A governing Board, independent from Government, will oversee and approve all aspects of the Trust. Initially, on a short-term basis the Province will appoint the members of the governing Board of the Trust. Thereafter, it will be an “evergreen” Board which can renew its own members, except for those representing the Province.

Given the unique nature of this Trust and the purposes for which it is intended, the size and shape of the governing Board will be determined in consultation with the affected First Nations. This must be done within a matter of weeks, to ensure that there is sufficient time to draft legislation and establish the Trust in the current fiscal year.

The objective is to identify a model for establishing a governing Board that will meet the needs and interests of the First Nations it is intended to represent. Exactly how this might best be accomplished will be determined in concert with the participating First Nations. However, it is expected that the Board’s composition will reflect the following basic principles:

- The size of the Board should be manageable enough to ensure workable decision-making and proper accountability.
- A majority of Board members will be appointed by the participating First Nations, so as to ensure their ongoing control of the Trust and the Board.
- A minority of Board members will be appointed by the Province, from among qualified candidates.

- No single First Nation and/or regional grouping of First Nations represented on the Board should have a disproportionate control over the Board. There should be equity in representation and decision-making.
- If the Province is obliged to appoint the initial Board in the event that the First Nations affected are unable to reach a timely consensus on the structure or membership of the Board, a majority of Board members will be selected from individuals nominated by its participating First Nations.

The following options are not exhaustive, but may help guide consultations in determining an appropriate Board structure:

Options:

- A. Initial appointment options
 - i. Government chooses a limited number (a minority) of Board members based on expertise/capacity and then appoints the remainder based on nominations from First Nation groups
 - ii. Same as option i except First Nation nominations are regionally based
- B. Subsequent appointment options
 - i. Evergreen Board with Province appointing its own members (a minority), the balance coming from First Nation representation
 - ii. Evergreen Board based on identification of members developed jointly by Government and First Nations and submitted to the Board
 - iii. Evergreen Board based on identification of members submitted by Board to Province and First Nations for review
- C. Chair appointment options
 - i. The Chair of the Board elected by membership of the Board and can only come from FN representatives
 - ii. Same as option i except Chair can come from any member.

FISCAL MANAGEMENT CONSIDERATIONS:

The \$15 million cost of the BC Rail First Nations Benefits Trust will come from the \$1 billion in proceeds that the Province expects to receive from CN Rail from the BC Rail Investment Partnership. Any costs associated with the administration of the Trust or operation of the Board will come from the Trust funds, including any interest income of the Trust, to ensure there are no impacts on Ministry budgets.

The timing of the legislation and release of funding will be coordinated with the overall timing of the receipt of the proceeds from CN Rail to ensure the transactions occur this fiscal year. Costs to Ministries will be incurred through the dedication of staff time on development of the legislation and work with First Nations on the administrative mechanisms of the Board and the Trust.

The legislation will specify that the Trust cannot be repatriated to the government. As it will be independent of Government control and established with a one-time grant, it will not be subject to the *Balanced Budget and Ministerial Accountability Act*

CONSULTATION

In order to ensure the meaningful participation of First Nations in administering the Trust, and to ensure that the Trust is designed to meet the needs of First Nation communities, engagement with First Nations on the structure and scope of the Trust is necessary. A Trust developed wholly by the Province or with limited involvement by First Nations could result in the withdrawal of any support for the Partnership Agreement and could also potentially affect broader government relationships with the First Nations communities.

First Nation proposed engagement process:

- Letter sent immediately by Minister Plant to 25 First Nations and posted on the Government web site outlining the creation of Trust and need to work together to determine details/Board representation
- Internal government working group (TNO, MAG, OCG) struck to develop legislation, government priorities (accountability, GAAP, etc)
- Meeting held with 25 First Nations in early January with a senior TNO staff, supported by staff from TNO, MAG and OCG to determine internal working group First Nation participants
- Internal government working group expanded to include First Nation reps and established by mid- January. WG to work on structure and scope of Trust, review and discuss Board membership appointment options, and develop detailed instructions to legislative counsel by end of January
- Legislation establishing Trust and appointing external agency to deliver Trust funds to be introduced for debate in the Legislature, pending finalization of the BC Rail Investment Partnership with CN Rail in fiscal 2003/04

RECOMMENDED DECISION:

1. Authorize approval to draft legislation aimed at establishing and funding the BC Rail First Nations Benefits Trust, pursuant to consultation with the affected First Nations, as outlined above.

SIGNATURE:

Minister Geoff Plant
Attorney General and Minister Responsible for Treaty Negotiations

DATE: December 4, 2003

KEY CONTACT:

Lorne Brownsey, Deputy Minister, Treaty Negotiations Office
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APPENDICES TO SUBMISSIONS

A. List of First Nations along the BC Rail Corridor

APPENDIX A

LIST OF FIRST NATIONS ALONG THE BC RAIL CORRIDOR

FIRST NATION
1. Fort Nelson
2. Blueberry River
3. Gitksan (Bear Lake)
4. Takla Lake
5. Tl'azt'en Nation
6. Sauteau
7. West Moberly First Nations
8. McLeod Lake
9. Nak'azdli
10. Lheidli T'enneh
11. Red Bluff
12. Alexandria
13. Xats'ull (Soda Creek)
14. Williams Lake
15. Canim Lake
16. Ts'kw'aylaxw
17. Bridge River
18. T'itq'et
19. Xaxli'p
20. Cayoose Creek
21. Seton Lake
22. N'Quat'Qua
23. Mount Currie
24. Squamish Nation
25. Tsawwassen
TOTAL BANDS: 25